

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

January 28, 1999 LB 24

mother or I want to go with my father. The part of that, it becomes cost. What the court ruling has done now has said, well, if you're...and what's been practically done, I guess I should retreat just a little, practically what's done, there was guardian ad litem appointed. The guardian ad litem could listen to both sides, could interview those people, be involved in depositions, and the guardian ad litem would come into court and say, your honor, I think that the child should go with the mother or the father because that's the best interest and here are my facts, lay that out and then still represent the child in the proceeding. Court said you can't do that. You can't give your recommendations and then cross-examine someone and be a lawyer; that those two things are conflicting. As a practical matter what's happened is you now got courts that appoint a guardian ad litem and a lawyer and you've doubled the cost of it, and the same things are being done. It's troubling and it's difficult. One is that if you've got a pool of those people out there it's okay, but you have trouble finding good competent people, and now you're going to double the cost of putting them in there. And the problem, Senator Landis's case, I mean, I think, Senator Landis, your bill is fine and I plan to vote for it. The other is that if I read that correctly and I don't...I'll let you have your time to do it, we're talking about those that are also...well, I'm trying to think of the correct term, incompetent to handle their own affairs and those cases. Are we talking about the regional center issues where you...you've got a divorce action where one, usually the spouse, is in the regional center or is under some disability? Most of those people I think the problem becomes is there's never enough money and so it becomes a race to see who can get the legal services first. If they get the legal services first, they'll get Legal Aid to represent them, and then who represents the incompetent spouse at the regional center? Because Legal Aid won't take their case on because they're already on one side of it. There's nobody to represent the indigent spouse and it really is a race to see who can get the legal aid first, and that is a huge problem and one that I'd be interested in Senator Landis's observation of that. But between now and Select File, I don't know if there's anything we can do about the Betz case. I've labored with it since it came out. The court did make some mention there was no clear statutory scheme for the duties of a guardian ad litem. We just sort of refer to them and don't give